

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KENNETH MANFREDI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:21-cv-319
)	
APPLE RECOVERY SERVICES CORP.,)	
)	
Defendant.)	

PLAINTIFF’S COMPLAINT

Plaintiff, KENNETH MANFREDI (“Plaintiff”), through his attorney, Agruss Law Firm, LLC, alleges the following against Defendant, APPLE RECOVERY SERVICES CORP. (“Defendant”):

INTRODUCTION

1. Count I of Plaintiff’s Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (“FDCPA”).
2. Count II of Plaintiff’s Complaint is based on the Texas Debt Collection Act, Tex. Fin. Code Ann. § 392, et al. (“TDCA”).

JURISDICTION AND VENUE

3. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, 1367 and 15 U.S.C. § 1692k and 15 U.S.C. § 1693(m).
4. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,”

5. 28 U.S.C. § 1367 grants this court supplemental jurisdiction over the state claims contained within.
6. Venue and personal jurisdiction in this District are proper because Defendant does or transacts business within this District, and a material portion of the events at issue occurred in this District.

PARTIES

7. Plaintiff is a natural person residing in the City of Spring, Harris County, State of Texas.
8. Plaintiff is a consumer as that term is defined by the FDCPA and TDCA.
9. Plaintiff allegedly owes a debt as that term is defined by the FDCPA and TDCA.
10. Defendant is a debt collector as that term is defined by the FDCPA and TDCA.
11. Defendant attempted to collect a consumer debt from Plaintiff.
12. Defendant is a collection agency located in the City of Oak Brook, DuPage County, State of Illinois.
13. Defendant is a business entity engaged in the collection of debt within the State of Texas.
14. Defendant's business includes, but is not limited to, collecting on unpaid, outstanding account balances.
15. The principal purpose of Defendant's business is the collection of debts allegedly owed to third parties.
16. Defendant regularly collects, or attempts to collect, debts allegedly owed to third parties.
17. During the course of its attempts to collect debts allegedly owed to third parties, Defendant sends to alleged debtors bills, statements, and/or other correspondence, via the mail and/or electronic mail, and initiates contact with alleged debtors via various means of telecommunication, such as by telephone and facsimile.

18. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

19. Defendant is attempting to collect an alleged consumer debt from Plaintiff originating with MBNA Bank.

20. The alleged debt at issue arises from transactions for personal, family, and household purposes.

21. Plaintiff does not owe the alleged debt that Defendant seeks to collect.

22. At all times relevant, Defendant knew or should have known that Plaintiff does not owe the alleged debt.

23. If the debt is owed at all, the statute of limitations has passed.

24. Within the past year of Plaintiff filing this Complaint, Defendant began sending letters to Plaintiff, in an attempt to collect the alleged debt not owed by Plaintiff.

25. On or about August 27, 2020 and October 5, 2020, Defendant sent a letter to Plaintiff in an attempt to collect the alleged debt. *See* Letters from Defendant dated August 27, 2020 and October 5, 2020, attached hereto as Exhibits A and B, respectively.

26. Defendant's letters dated August 27, 2020 and October 5, 2020, did not disclose that the statute of limitations passed on the alleged debt owed.

COUNT I DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

27. Plaintiff repeats and re-alleges paragraphs one (1) through twenty-six (26) of Plaintiff's Complaint as the allegations in Count I of Plaintiff's Complaint.

28. Defendant violated the FDCPA based on the following:

a. Defendant violated § 1692e of the FDCPA by its use of any false, deceptive, or

misleading representation or means in connection with the collection of any debt, when Defendant engaged in engaged in, at least, the following discrete violations of § 1692e;

- b. Defendant violated § 1692e(10) of the FDCPA by using any false representation or deceptive means to collect or attempt to collect any debt, when Defendant attempted to collect a debt not owed by Plaintiff and when Defendant attempted to collect a time-barred debt from Plaintiff without disclosing to Plaintiff that the debt is past the statute of limitations; and
- c. Defendant violated § 1692(f) of the FDCPA by using fair or unconscionable means in connection with the collection of an alleged debt, when Defendant engaged in the foregoing conduct.

WHEREFORE, Plaintiff, KENNETH MANFREDI, respectfully requests judgment be entered against Defendant, APPLE RECOVERY SERVICES CORP., for the following:

- 29. Statutory damages of \$1,000.00 pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k;
- 30. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k; and
- 31. Any other relief that this Honorable Court deems appropriate.

COUNT II
DEFENDANT VIOLATED THE TEXAS DEBT COLLECTION ACT

- 32. Plaintiff repeats and re-alleges paragraphs one (1) through twenty-six (26) of Plaintiff's Complaint as the allegations in Count II of Plaintiff's Complaint.
- 33. Defendant violated the TDCA based on the following:
 - a. Defendant violated Tex. Fin. Code § 392.304(8) by misrepresenting the character,

extent, or amount of a consumer debt, when Defendant attempted to collect a debt not owed by Plaintiff and when Defendant attempted to collect a time-barred debt from Plaintiff without disclosing to Plaintiff that the debt is past the statute of limitations.

WHEREFORE, Plaintiff, KENNETH MANFREDI, respectfully requests judgment be entered against Defendant, APPLE RECOVERY SERVICES CORP., for the following:

34. For statutory damages provided and pursuant to Tex. Fin. Code Ann. § 392.403 and/or Tex. Bus. & Com. Code § 17.50(d);
35. For attorneys' fees, costs and disbursements;
36. Injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1); and
37. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

DATED: February 01, 2021

RESPECTFULLY SUBMITTED,

By: /s/ Michael S. Agruss
Michael S. Agruss
SBN: 6281600
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Chicago, IL 60640
Tel: 312-224-4695
Fax: 312-253-4451
michael@agrusslawfirm.com
Attorney for Plaintiff

EXHIBIT A

APPLE RECOVERY SERVICES
PO BOX 9002
OAK BROOK, IL 60522-9002

KENNETH MANFREDI

SPRING, TX 77373-0840



Apple ID: 108358
Creditor: MBNA BANK
Account Number: [REDACTED] 2900
Balance: \$4,120.66

08-27-2020

Dear KENNETH MANFREDI,

The above account has been purchased by Apple Recovery Services Corp. We would like to work with you on the best possible arrangement to fit your personal finances. Please use the form on the back of this letter to let us know what payment arrangement you can afford and if you have any questions regarding your payment options, please contact us at 888-675-9760.

This is a communication from a debt collector. Any information obtained will be used for that purpose. Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

PLEASE SEE REVERSE SIDE FOR PAYMENT INSTRUCTIONS

APPLE RECOVERY SERVICES
PO Box 9002
Oak Brook, IL 60522-9002



1-888-675-9760

Mon-Fri: 8AM-5PM CST

Visit our website:

www.applerecovery.net

Email Us:

info@applerecovery.net

We have representatives available!



ACCREDITED
BUSINESS

At Apple we promise
We *Will* Respect You
We *Will* Listen to You
We *Will* Work With you

0101700000209*7



EXHIBIT B

APPLE RECOVERY SERVICES
PO BOX 9002
OAK BROOK, IL 60522-9002

200019-06 1 117 140

KENNETH MANFREDI

SPRING, TX 77373-8640



Apple ID: 108358
Creditor: MBNA BANK
Account Number: [REDACTED] 2900
Balance: \$4,175.79
Settlement: \$2,923.05

10-05-2020

Dear KENNETH MANFREDI,

This is a time sensitive Settlement Offer. This offer expires **November 04, 2020**. At Apple Recovery, our goal is to provide you achievable options to satisfy your outstanding debt. We are willing to accept a reduced balance of **\$2,923.05** to settle this matter in full. Please call us at (888) 675-9760 between the hours of 8 AM and 5 PM CST to execute your settlement arrangement or if you have any questions. You can also pay online at www.applerecovery.net, or fill out the form on the back of this notice to indicate your desired payment amount, frequency, and method. Once we have your settlement arrangement recorded we will send you out either a letter confirming the payment option that you set up or, if you pay it in full, a paid in full letter for your records.

If you schedule payments we will send you a notice for each payment. Please note that, when choosing your payment schedule, any missed/returned payments may void your settlement unless you notify us in advance.

This communication is from a debt collector and is an attempt to collect a debt. Any information obtained will be used for that purpose.

PLEASE SEE REVERSE SIDE FOR PAYMENT INSTRUCTIONS

APPLE RECOVERY SERVICES
PO Box 9002
Oak Brook, IL 60522-9002



1-888-675-9760

Mon-Fri: 8AM-5PM CST

Visit our website:

www.applerecovery.net

Email Us:

info@applerecovery.net

We have representatives available!



At Apple we promise
We *Will* Respect You
We *Will* Listen to You
We *Will* Work With you



Pay to the order of _____ \$ _____

For _____

COLTANALTRC 050741197010134

Routing Number Account Number Check Number

John 2 Sample

CCV

Tear along perforated edge

Statement Date	Apple File Number	Original Acct Number	Original Creditor	Settlement Amt	Amount Paid
10-05-2020	108358	██████████32900	MBNA BANK	\$2,923.05	\$

Check one of the following options below and return with your payment.

- ☐ I have enclosed the full balance of \$ _____
- ☐ I cannot pay my amount in full at this time, but I have enclosed the first installment of \$ _____. If accepted I will pay \$ _____
- ☐ I would like to take advantage of the convenient auto-pay feature.

Please include Bank Routing Number, Bank Name, Account Number, City & State Required

Checking Account

Routing #: _____ Account#: _____

Bank Name: _____ City & State: _____

Signature: _____ Date: ____/____/____

Please Draft My Payments (circle): Monthly/Semi Monthly(1st & 15th)/ Bi-Weekly/Weekly

Beginning: ____/____/____ Phone Number: (optional) (____) _____

Pay over the phone at (888) 675-9760 Monday - Friday 8am to 5pm CST.

☐ VISA ☐ MasterCard ☐ Discover ☐ American Express

ACCT#: _____

EXP DATE: ____/____ CCV: ____ AMOUNT \$: _____

CARD HOLDER NAME _____

BILLING ADDRESS _____

CITY _____ STATE _____ ZIP _____

SIGNATURE _____